

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** SB

**SPONSOR(S):**

**TIED BILLS:**

**IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)			Blalock	Hamby
2)				
3)				
4)				
5)				

## SUMMARY ANALYSIS

During the 2010 legislative session, the Legislature passed HB 550, which, in part, created an onsite sewage treatment and disposal system evaluation program (program) to be administered by the Department of Health (DOH) beginning January 1, 2011. The purpose of the program is to assess the fundamental operational condition of septic systems and identify failures within the systems. The DOH has begun the rulemaking process to implement the program, but has encountered delays. Concerns have also been expressed by the DOH, its Technical Review and Advisory Panel, and the public regarding the unknown costs associated with implementation of the program, including costs to property owners who must pay for the inspection and any remedial activities, as well as implementation costs to the state. Because of the short timeframe for developing the rule and implementing the program, it appears that there is insufficient time for the DOH to complete a cost estimate and adopt a final rule before the required January 1, 2011, implementation date.

This bill extends the beginning date for implementing the program from January 1, 2011 to July 1, 2011.

This bill will decrease the DOH's workload associated with program implementation for fiscal year 2010-2011, and will have no fiscal impact on local governments. The bill will delay the anticipated positive economic impact on private businesses performing inspections and repairs expected to result from implementation of the program, and will delay the requirement for some septic system owners to incur program compliance costs.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

The Department of Health (DOH) oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is oversight of sewage treatment and disposal systems, i.e., septic tanks.<sup>1</sup> The DOH estimates there are 2.6 million septic tanks in use statewide.

The Bureau of Onsite Sewage Programs develops statewide rules and provides training and standardization for County Health Department employees responsible for issuing permits for the installation and repair of onsite septic systems within the state. The bureau also licenses septic system contractors, approves continuing education courses and courses provided for septic tank contractors, funds a hands-on training center, and mediates onsite sewage treatment and disposal system contracting complaints. In addition, the bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic system designs.<sup>2</sup>

During the 2010 legislative session, the Legislature passed HB 550, which, in part, created an onsite sewage treatment and disposal system evaluation program (program) to be administered by the DOH beginning January 1, 2011. The purpose of the program is to assess the fundamental operational condition of septic systems and identify failures within the systems. Section 381.0065(5), F.S., directs the DOH to adopt rules implementing the program standards, procedures, and requirements, including a schedule for a 5-year evaluation cycle, requirements for the pump-out of a system or repair of a failing system, enforcement procedures for failure of a system owner to obtain an evaluation of the system, and failure of a contractor to timely submit evaluation results to the DOH and the system owner. The DOH must ensure statewide implementation of the program by January 1, 2016.

The program requires the owner of a septic system, excluding a system that is required to obtain an operating permit,<sup>3</sup> to have the system evaluated at least once every 5 years to assess the fundamental operational condition of the system, and identify any system failures. The evaluation must include a

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<sup>1</sup> § 381.006, F.S. (2009).

<sup>2</sup> Description of the Bureau of Onsite Sewage from the DOH website. Available at: <http://www.doh.state.fl.us/environment/ostds/OSTDSdescription.html>.

<sup>3</sup> Systems that require an operating permit are typically large scale complex commercial systems and anaerobic systems. Typical residential septic systems require a permit for installation, but not an annual operating permit.

tank and drainfield evaluation, a written assessment of the condition of the system, and, if necessary, a disclosure statement. A septic system owner must pay the cost of the evaluation as well as a 5-year evaluation report fee of not less than \$15, or more than \$30, which is collected by the person conducting the septic system evaluation and remitted to the DOH. The actual cost of an evaluation, as well as the cost of any necessary remedial actions, is one of the issues currently under review by the DOH.

Owners of septic systems are responsible for paying the cost of any required pump-out, repair, or replacement, and cannot request partial evaluation or the omission of portions of the evaluation. Each evaluation or pump-out must be performed by a registered septic tank contractor or master septic tank contractor, a licensed professional engineer with wastewater treatment system experience, or an environmental health professional certified in the area of onsite sewage treatment and disposal system evaluation. Prior to any evaluation deadline, the DOH must provide a minimum 60 days notice to owners that their systems must be evaluated by that deadline.

Systems being evaluated that were installed prior to January 1, 1983, must meet a minimum 6-inch separation from the bottom of the drainfield to the wettest season water table elevation. All drainfield repairs, replacements, or modifications to systems installed prior to January 1, 1983, must meet a minimum 12-inch separation from the bottom of the drainfield to the wettest season water table elevation. Systems being evaluated that were installed after January 1, 1983, must meet a minimum 12-inch separation from bottom of drainfield to the wettest season water table elevation, and all drainfield repairs, replacements, or modifications to these systems must meet a minimum 24-inch separation from bottom of drainfield to the wettest season water table elevation.

A pump-out of a septic system is not required if documentation of a pump-out or a permitted new installation, repair, or modification of the system within the previous 5 years is provided, and the documentation states the capacity of the tank and indicates that the condition of the tank is not a sanitary or public health nuisance as defined by DOH rule.

Beginning on January 1, 2012, the DOH will administer a grant program to assist low-income owners of septic systems to defray some of the cost of complying with the requirements of the evaluation program. A grant can be awarded to an owner for the purpose of inspecting, pumping, repairing, or replacing a system serving a single-family residence occupied by an owner with a family income of less than or equal to 133% of the federal poverty level.<sup>4</sup> At least \$1, but no more than \$5, of the evaluation report fee described above must be used to fund the grant program.

The DOH has begun the rulemaking process to implement the evaluation program, but has encountered delays. Concerns have been expressed by the DOH, its Technical Review and Advisory Panel, and the public regarding the unknown costs associated with implementation of the program, including costs to property owners required to pay for the inspection and any remedial activities, as well as implementation costs to the state. Because of the short timeframe for developing the rule and implementing the program, it appears that there is insufficient time for the DOH to complete a cost estimate and adopt a final rule before the required January 1, 2011, implementation date.

### **Effect of Proposed Changes**

This bill amends s. 381.0065(5), F.S., to extend the beginning date for administering the onsite sewage treatment and disposal system evaluation program from January 1, 2011 to July 1, 2011.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 381.0065(5), F.S., to extend the beginning date for administering the onsite sewage treatment and disposal system evaluation program from January 1, 2011 to July 1, 2011.

Section 2. Provides an effective date.

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<sup>4</sup> Depending on the size of a family, 133% of the federal poverty level equals a yearly income of between \$14,404 and \$49,223.  
[https://www.cms.gov/MedicaidEligibility/07\\_IncomeandResourceGuidelines.asp](https://www.cms.gov/MedicaidEligibility/07_IncomeandResourceGuidelines.asp).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Section 381.0066(2), F.S., provides for an evaluation report fee not less than \$15, or more than \$30 to be remitted to the DOH, which the DOH projects will cover the department's cost to implement the evaluation program. The delay in program implementation effected by the bill will eliminate these revenues for fiscal year 2010-2011.

#### 2. Expenditures:

Under s. 381.0065(5), F.S., the DOH is required, beginning January 1, 2011, to create and administer a statewide septic tank evaluation program. According to the estimates provided by the DOH during the 2010 legislative session, implementation of the program in Year 1 will cost the DOH \$2.96 million and require 55 additional positions. However, the 2010 legislature did not appropriate any funds or positions specifically for the implementation of the program. By delaying the implementation to July 1, 2011, the bill will reduce the DOH's workload during fiscal year 2010-2011.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The septic system evaluation program, once implemented, will likely increase revenues of persons or businesses in the private sector who are authorized to perform the required evaluations and any pump-out, repairs, replacements, or modifications identified during the evaluation of a septic system. The bill will delay this increase in revenues for six months. Conversely, property owners who use a septic system will bear the costs of an evaluation and any necessary remedial activities. The bill will delay those costs for at least 6 months. The grant program administered by the DOH will defray a portion of the costs for qualified low-income septic system owners.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

This bill revises the rulemaking authority of the DOH by changing the date upon which the DOH must begin administering the septic system evaluation program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

N/A